BELCO DEVELOPMENT CORP.

IBLA 82-835 Decided August 10, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, dismissing a protest against the offering of two parcels of land within the Stagecoach Unit area at a competitive oil and gas lease sale. U 51022, U 51023, 14-08-0001-6951.

Reversed.

1. Administrative Practice--Geological Survey--Minerals Management Service--Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Unit and Cooperative Agreements

   Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

APPEARANCES: James P. Miller, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Belco Development Corporation (Belco) appeals the April 30, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), which dismissed Belco's protest against the inclusion of NE 1/4 SE 1/4 sec. 7, S 1/2 NE 1/4, E 1/2 NW 1/4, E 1/2 SE 1/4 sec. 17, T. 9 S., R. 22 E., Salt Lake meridian, as parcels 1 and 2 in the competitive oil and gas lease sale held April 27, 1982. The protested lands are within the Wasatch participating area of the Stagecoach Unit, of which Belco is the operator.

The Stagecoach Unit agreement, Utah, 14-08-0001-6951, was approved by the Acting Director, United States Geological Survey (GS), September 15, 1960, effective as of March 1, 1960. The authority to approve the unit agreement was vested in the Director, GS, by Departmental Order No. 2365 of October 8, 1947 (12 FR 6784). The unit area embraced some 26,128 acres in Ts. 8, 9 S., Rs. 20, 21, and 22 E., Salt Lake meridian, of which some 15,948 acres were Federal lands leased for oil and gas. Tract 13 on the unit map was oil and gas lease U 019361, and included SE 1/4 SE 1/4 sec. 6, NE 1/4 NE 1/4, NE 1/4 SE 1/4 sec. 7, E 1/2 NW 1/4, S 1/2 NE 1/4, E 1/2 SE 1/4 sec. 17, T. 9 S., R. 22 E. This lease was fully committed to the unit agreement.

A Wasatch participating area of 640 acres (all sec. 8, T. 9 S., R. 22 E.) was established effective November 8, 1961, with the first revision January 1, 1962, increasing the size of the participating area to 1,760 acres (S 1/2 NE 1/4, SE 1/4 sec. 7, N 1/2, E 1/2 SW 1/4, SE 1/4 sec. 17, E 1/2 NE 1/4 sec. 18, E 1/2 NW 1/4 sec. 20, T. 9 S., R. 22 E.)

Lease U 019361 was relinquished May 24, 1963. In a letter dated October 7, 1964, the Acting Director, GS, advised Belco that the parts of tract 13 (NE 1/4 SE 1/4 sec. 7, E 1/2 NW 1/4, S 1/2 NE 1/4, E 1/2 SE 1/4 sec. 17, T. 9 S., R. 22 E.) within the Wasatch participating area of the Stagecoach Unit had not been leased within the 6-month period following relinquishment of lease U 019361, so no lease will be issued for the said lands so long as they remain within the participating area, pursuant to the fourth paragraph of section 30 of the unit agreement, and pursuant to the fifth paragraph of section 30, the unit operator (Belco) will be required to make payments for the working interest owners to compensate for rentals, minimum royalties,and royalties which are applicable to the said lands under the terms of lease U 019361. 1/

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1/ Section 30 of the Stagecoach Unit agreement provides, in pertinent part:

"30. SURRENDER. Nothing in this agreement shall prohibit the exercise by any working interest owner of the right to surrender vested in such party in any lease, sub-lease, or operating agreement as to all or any part of the lands covered thereby, provided that each party who will or might acquire such working interest by such surrender or by forfeiture as hereafter set forth, is bound by the terms of this agreement.

"If as a result of any such surrender, the working interest rights as to such lands become vested in any party other than the fee owner of the unitized substances, said party shall forfeit such rights and no further benefits from operation hereunder as to said land shall accrue to such party, unless within ninety (90) days thereafter said party shall execute this agreement and the unit operating agreement as to the working interest acquired through such surrender, effective as though such land had remained continuously subject to this agreement and the unit operating agreement. And in the event such agreements are not so executed, the party next in the chain of title shall be and become the owner of such working interest at the end of such ninety (90) day period, with the same force and effect as though such working interest had been surrendered to such party.

Thereafter, at the request of the Regional Oil and Gas Supervisor, GS, Casper, Wyoming, in a memorandum dated October 16, 1964, BLM assigned serial number U 143459 to the GS contract with Belco to cover payments required to compensate for rentals, minimum royalties, and royalties applicable to lands within the Wasatch participating area formerly in lease U 019361. Such payments have been made since that time by Belco.

In October 1978, BLM asked the Regional Solicitor, Salt Lake City, Utah, for an opinion of the legality of the payments to compensate for rentals, minimum royalties, and royalties for the unleased portion of tract 13 in the Wasatch participating area of the Stagecoach Unit, and whether the United States is obligated to lease the land, which is within a known geologic structure of a producing gas field, and unleased.

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fn. 1 (continued)

"If as the result of any such surrender or forfeiture the working interest rights as to such lands become vested in the fee owner of the unitized substances, such owner may:

"(1) Execute this agreement and the unit operating agreement as a working interest owner, effective as though such land had remained continuously subject to this agreement and the unit operating agreement.

"(2) Again lease such lands but only under the condition that the holder of such lease shall within thirty (30) days after such lands are so leased execute this agreement and the unit operating agreement as to each participating area theretofore established hereunder, effective as though such land had remained continuously subject to this agreement and the unit operating agreement.

"(3) Operate or provide for the operation of such land independently of this agreement as to any part thereof or any oil or gas deposits therein not included within a participating area.

"If the fee owner of the unitized substances does not execute this agreement and the unit operating agreement as a working interest owner or again lease such lands as above provided with respect to each existing participating area, within six (6) months after any such surrender or forfeiture, such fee owner shall be deemed to have waived the right to execute the unit operating agreement or lease such lands as to each such participating area, and to have agreed, in consideration for the compensation hereinafter provided, that operations hereunder as to any such participating area or areas shall not be affected by such surrender.

"For any period the working interest in any lands are not expressly commited [sic] to the unit operating agreement as the result of any such surrender or forfeiture, the benefits and obligations of operations accruing to such lands under this agreement and the unit operating agreement shall be shared by the remaining owners of unitized working interests in accordance with their respective participating working interest ownerships in any such participating area or areas, and such owners of working interests shall compensate the fee owner of unitized substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease in effect when the lands were unitized, as to such participating area or areas."

Thereafter an attorney in the Regional Solicitor's Office, by memorandum dated January 9, 1980, made these statements:

> Section 30 of the Agreement states:
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> > If as the result of any such surrender or forfeiture the working interest rights as to such lands become vested in the fee owner of the unitized substances, such owner may:
> >
> > (1) Execute this agreement and the unit operating agreement as a working interest owner, effective as though such land had remained continuously subject to this agreement and the unit operating agreement.
> >
> > (2) Again lease such lands but only under the condition that the holder of such lease shall within thirty (30) days after such lands are so leased execute this agreement and the unit operating agreement as to each participating area theretofore established hereunder, effective as though such land had remained continuously subject to this agreement and the unit operating agreement.
> >
> > (3) Operate or provide for the operation of such land independently of this agreement as to any part thereof or any oil or gas deposits therein not then included within a participating area.
> >
> > If the fee owner of the unitized substances does not execute this agreement and the unit operating agreement as a working interest owner or again lease such lands as above provided with respect to each existing participating area, within six (6) months after any such surrender or forfeiture, such fee owner shall be deemed to have waived the right to execute the unit operating agreement or lease such lands as to each such participating area, and to have agreed, in consideration for the compensation hereinafter provided, that operations hereunder as to any such participating area or areas shall not be affected by such surrender. (Emphasis added).

If the above passage applies to the United States (as fee owner) no leasing may occur until the tract in question is withdrawn from the Stagecoach Unit.

> It is impossible to determine with any degree of certainty if the quoted language of Section 30 was meant to apply to the United States. Superficially, the United States may well be seen as a "fee owner" who became vested with "working interest rights" at the time of the surrender by DeKalb and Belco. A more technical interpretation would indicate that the Government is not really in the position of a traditional "fee owner" as intended by the language of the Agreement. These conflicting interpretations make it impossible to reach a definite conclusion as to whether Section 30 of the Agreement binds the Government and precludes further leasing.
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> The statutory authority for the unitized operation of oil and gas properties (Act of August 8, 1946, 60 Stat. 952 § 17(G)) states: "The Secretary is thereunto authorized, in his discretion . . . to establish . . . such regulations . . . as he may deem necessary and proper to secure the proper protection of the public interest." Section 30 of the Stagecoach Unit Agreement is drawn directly from the model agreement set out at 30 CFR § 226.12. This clause must be interpreted in light of its statutory authority. It is submitted that interpreting Section 30 as applying to the United States (to preclude further leasing of the tract in question) is not consistent with the requirement that all Unit Agreement regulations provide "proper protection of the public interest." For this reason, we are of the opinion that a lease may be issued on the relinquished tracts without violating the terms of the Unit Agreement. A more definite interpretation is impossible in light of the vagueness of the language in the Agreement.

Following receipt of the Regional Solicitor's memorandum, BLM included the unleased land in the Wasatch participating area of the Stagecoach Unit in a competitive oil and gas lease sale held April 27, 1982. Belco's protest was dismissed and this appeal followed.

Belco contends that the Regional Solicitor is incorrect in attempting to distinguish the difference between the United States and a "fee owner," that the "fee owner" is "the person in whom is vested the ownership, dominance or title of property." All real estate has a fee owner, whether such fee owner be the Federal Government, a state government, other governmental entity or an individual. Many individuals have acquired their land title by patent from the United States, which patent vests the fee title in the patentee. Conversely, the fee to lands not patented out of United States' ownership would remain with the United States as fee owner. Belco argues that payment of compensation to the fee owner under section 30 of the Stagecoach Unit agreement equal to rentals, minimum royalties, and royalties must refer to either Federal or state fee ownership as minimum royalties are normally applicable only to Federal or state leases. Patented lands do not normally require payment of minimum royalty so the reference to such method of compensation clearly indicates that "fee owner" and the United States are synonymous in the context of section 30 of the unit agreement.

Furthermore, Belco and Conoco, as operators within the Stagecoach Unit, believe the subject tracts are committed to the unit agreement, and pursuant to section 30 of the unit agreement they have been paying royalties attributable to the 280 acres to the United States since lease U 019361 was relinquished in 1963.

The Government attorney did not consider the fifth paragraph of section 30 of the unit agreement which defines the benefits and obligations of operators accruing to lands in surrendered leases previously committed to the unit agreement. The Acting Director, GS, advised Belco in a letter dated October 7, 1964, that the payments defined in the fifth paragraph of section 30 of the unit agreement were required from the remaining lessees in the Stagecoach Unit. That letter was tacit admission by GS, which had approved the unit agreement under authority from the Secretary, that the United States was considered the "fee owner" of the unleased, unpatented public lands within the Stagecoach Unit.

Inasmuch as payments equivalent to those chargeable under the terms of the surrendered lease U 019361 have been made to the United States since the lease was relinquished in May 1963, we are unable to see any rationale supporting the Government attorney's suggestion that "proper protection of the public interest" requires leasing of the land formerly in lease U 019361. The exact quotation from the Act of August 8, 1946 (paraphrased by the Government attorney), reads:

> The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this Act shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

We are unable to see how any rights of the United States have been jeopardized in the management of the Stagecoach Unit, and receipt by the United States of payment of sums equal to rentals, minimum royalties, and royalties on the land formerly in lease U 019361.

Accordingly, it must be held that the United States is bound by the terms of section 30 of the Stagecoach Unit agreement, and having not issued a new lease within the 6-month period immediately following the relinquishment of lease U 019361, the United States may not now issue any lease for that

and so long as it remains in the Stagecoach Unit. It is a situation somewhat analogous to that discussed in Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982), and California Portland Cement Co. v. Andrus, 667 F.2d 953 (10th Cir. 1982). Those cases involved coal leases issued under the Mineral Leasing Act of 1920, 30 U.S.C. 181-287 (1976), the same Act which permits oil and gas leasing of the public lands. The leases contained terms which provided that the royalty and other terms could be reviewed and amended at the end of a 20-year period. The question under consideration was: Could the United States amend the terms of the leases several years after the end of the stated 20-year period? The court ruled that the Department could revise the lease terms, but such revision had to occur at the end of the stated 20-year period, not at some later time. So in this case, where the unit agreement provided for issuance of a new lease only within 6 months after the relinquishment of a lease, we find there is no authority for the United States to offer such land for lease after almost 19 years following the relinquishment of the earlier lease.

The purported sale of oil and gas leases on the NE 1/4 SE 1/4 sec. 7, T. 9 S., R. 22 E., Salt Lake meridian (parcel 1), and E 1/2 NW 1/4, S 1/2 NE 1/4, E 1/2 SE 1/4 sec. 17, T. 9 S., R. 22 E., in the competitive lease sale of April 27, 1982, is vacated. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed. The case files are remanded to the Utah State Office, Bureau of Land Management, for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

2/ It is noted that the Minerals Management Service recommended rejection of the high bid for parcel 2, as being below the presale minimum value established for the parcel.